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revenue, tending to place him before the jury as a tax dodger, was not cured by an instruction that the rights of the parties were not affected by whether defendant or plaintiff paid a tax on the sale, that the evidence was only to be considered in determining whether plaintiff made a sale, and that the question as to his payment of the tax and why he paid it must be determined from all the facts in issue, since the instruction was confusing and misleading and upon a wholly immaterial question.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4180; Dec. Dig. § 1053 (6); Trial, Cent. Dig. § 977.* 1 Va.-W. Va. Enc. Dig. 585.]

4. Brokers (§ 85 (1)*)—Admissibility of Evidence—Instructions in Another Case.—In a broker's action against another broker for a commission claimed to be due under a special agreement, instructions given for the plaintiff in his previous suit against the purchaser, in which he claimed the entire commission, were admissible to show that plaintiff there claimed and assumed a position entirely inconsistent with his claim and position in the present suit.

[Ed. Note.—For other cases, see Brokers, Cent. Dig. §§ 106, 108, 110, 115; Dec. Dig. § 85 (1).* 2 Va.-W. Va. Enc. Dig. 638.]

5. Appeal and Error (§ 1056 (1)*)—Harmless Error—Exclusion of Evidence.—In such case, the exclusion of such instructions was harmless error, where substantially the same result was obtained by plaintiff's own admissions and by other testimony showing that he did in fact sue the purchaser for the entire commission on the sale, and where the evidence regarding his entire conduct was fully presented to the jury.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4187, 4191, 4207; Dec. Dig. § 1056 (1).* — Va.-W. Va. Enc. Dig. 595.]

Error to Circuit Court, Fauquier County.

Action by H. M. Hubbell against H. W. Hilleary. Judgment for plaintiff, and defendant brings error. Reversed and remanded for a new trial.

John S. Barbour, of Fairfax, and *R. A. McIntyre*, of Warrenton, for plaintiff in error.

Grimsley & Miller, of Culpeper, and *G. Latham Fletcher*, of Warrenton, for defendant in error.

HOUSTON v. LYNCHBURG TRACTION & LIGHT CO.

June 8, 1916.

[89 S. E. 114.]

1. Carriers (§ 314 (5)*)—Carriage of Passengers—Actions—Declaration—Sufficiency.—A declaration averring that plaintiff was a pas-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

senger on a street car, that she signaled the car to stop at the intersection of two streets, that in response to her signal the car was stopped, that while she was attempting to alight and had partially alighted from the car which was a summer car, and was receiving a package or bundle which was being handed to her by another passenger, the motorman and conductor in charge of the car negligently started it before plaintiff had gotten clear of the car and had moved to a place of safety, that the track was curved, and that the rear portion of the car swinging on the curve struck plaintiff, and injured her, states a cause of action showing the negligence charged, and that plaintiff was not given an opportunity to reach a place of safety.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1273, 1275½; Dec. Dig. § 314 (5); Negligence, Cent. Dig. § 182.* 2 Va.-W. Va. Enc. Dig. 721.]

2. Carriers (§ 247 (4)*)—Carriage of Passengers—Termination of Relation.—The relation of carrier and passenger does not terminate until after the passenger has alighted from the car and has had reasonable opportunity to reach a place of safety.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 991, 992; Dec. Dig. § 247 (4).* 2 Va.-W. Va. Enc. Dig. 702.]

3. Carriers (§ 314 (2)*)—Carriage of Passengers—Actions—Declaration.—While it is not sufficient merely to allege negligence in general terms, a declaration in a passenger's action is sufficient if the facts alleged show that the accident was not one which would have ordinarily occurred had reasonable care been exercised.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1273, 1275½; Dec. Dig. § 314 (2); Negligence, Cent. Dig. § 182.* 2 Va.-W. Va. Enc. Dig. 721.]

Error to Circuit Court of City of Lynchburg.

Action by Easter Houston against the Lynchburg Traction & Light Company. A demurrer was sustained to the declaration, and plaintiff brings error. Reversed.

Thos. J. O'Brien and *Don P. Halsey*, both of Lynchburg, for plaintiff in error.

Coleman, Easley & Coleman, of Lynchburg, for defendant in error.

SMITH *v.* WOLSIEFER.

June 8, 1916.

[89 S. E. 115.]

1. Pleading (§ 306*)—Written Instruments—Oyer.—The right to crave oyer of papers mentioned in a pleading applies only to specialties and letters of probate and administration, not to other writ-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.